

REMARKS

Upon entry of the present amendment, claims 1, 5-8, and 10-20 will remain pending in the above-identified application and stand ready for further action on the merits.

The amendment made herein to claim 1 does not incorporate new matter into the application as originally filed, and at the same time particularly and distinctly sets forth the invention, which the inventors regard as their own. In this respect, claim 1 has been amended to positively recite that "wherein jitter after overwriting does not exceed 15%". Support for this amendment occurs at page 18, lines 14-15 of the original specification.

It is noted that the dependency of claim 5 has been changed, based on the earlier cancellation of claim 2.

Claim Rejections Under 35 USC § 103(a)

Claims 1, 5-8, 10-13, 18 and 20 have been rejected under 35 USC § 103(a) as being obvious over Shinozuka et al. US '305 (US 5,298,305) in view of JP '789 (JP 09098789) further in view of Nonoyama et al. US '924 (US 5,646,924). Still further, remaining claims 14-17 and 19 have been rejected under 35 USC § 103(a) over the same three references, further in view of Miyauchi et al. US '021 (US 5,878,021). Reconsideration and withdrawal of each of

these rejections under 35 USC § 103(a) is requested based upon the following considerations.

Incorporation of Earlier Remarks

The rejections being set forth in the outstanding Office Action are essentially identical to earlier rejections set forth by the Examiner and responded to by Applicants in the written response of February 5, 2003. Accordingly, remarks set forth in the earlier filed response of February 5, 2003, at page 2, line 6 to page 5, line 11 are incorporated herein by reference in their entirety. The Examiner is respectfully requested to consider these remarks at the present time, including the fact that Applicants have positively amended claim 1 to now recite that "wherein jitter after overwriting does not exceed 15%". At page 4, lines 12-19 of the February 5, 2003 response, [this unexpected and advantageous property of the present invention is clearly described.] Apart from the above considerations, it is noted that in the outstanding Office Action at pages 6 and 7, the Examiner clearly indicates as follows:

"...It is noted that the features upon which Applicant relies (i.e., the importance of the effect nitrogen content has on jitter and...) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re

Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)."

"...Applicant argues the invention shows unexpected results over the conventional art in regards to the effect of the nitrogen gradient on jitter, as disclosed in the specification. Applicant continues to argue limitations not recited in the rejected claim(s), regarding nitrogen content effect on jitter. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)."

Accordingly, based upon the incorporation of remarks set forth in the earlier response of February 5, 2003, in combination with the instant amendment of independent claim 1 to positively recite the effect of "wherein jitter after overwriting does not exceed 15%", it follows that proper reconsideration and withdrawal of all outstanding rejections is now required. In this respect, none of the cited references, whether considered singularly or in combination render obvious the provision of an information recording medium as recited in instant claim 1, or any of the remaining claims that ultimately depend there from.

CONCLUSION

Based upon the amendments and remarks presented herein, the Examiner is respectfully requested to issue a Notice of Allowance clearly indicating that Applicants' claimed invention is allowed

Appl. No. 09/601,103

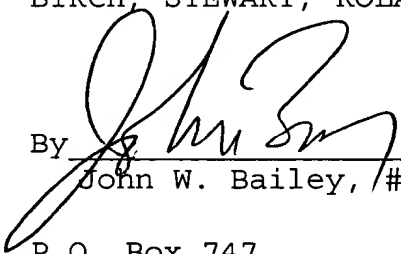
and patentable under the provisions of Title 35 of the United States Code.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey (Reg. No. 32,881) at the telephone number below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
John W. Bailey, #32,881

JWB/enm
0152-0531P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000